

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

CHRISTOPHER LINEBERRY,

Plaintiff,

v.

CIVIL ACTION NO. 5:17-cv-04124

UNITED STATES OF AMERICA,
FEDERAL BUREAU OF PRISONS,
CORRECTIONAL OFFICER [C.O.] MARTIN,
JOHN DOE[S] and JANE DOE[S],

Defendants.

MEMORANDUM OPINION AND ORDER

On October 4, 2017, the Plaintiff, proceeding *pro se*, filed his *Complaint* (Documents 2) in this matter. Pending are *Defendant [Martin]'s Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 25) filed on March 20, 2018, and *Defendant [Martin]'s Supplemental Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 35) filed on April 12, 2018.


By *Standing Order* (Document 4) entered on October 5, 2017, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On August 10, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 50) wherein it is recommended that *Defendant [Martin]'s Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 25) be denied as moot, and that *Defendant [Martin]'s Supplemental Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 35) be granted in part and denied in part.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by August 27, 2018, and none were filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that *Defendant [Martin]'s Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 25) be **DENIED AS MOOT**, and that *Defendant [Martin]'s Supplemental Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 35) be **GRANTED IN PART AND DENIED IN PART**. Specifically, it is **ORDERED** that the motion (Document 35) be **GRANTED** to the extent the Plaintiff is asserting a Bivens claim against the Bureau of Prisons, and be **DENIED** as to Defendant Martin's following arguments: (1) "There is no implied damages remedy for excessive use of force;" (2) "Even if a cause of action did exist, there is no constitutional violation;" and (3) "The Defendant is entitled to qualified immunity."

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: September 5, 2018


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA